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FEDERAL ELECTION COMMISSION
AUG 23 2012

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Guillermo Cabrera, Esq
600 West Broadway, Suite 700
San Diego, CA 92101,

OFFICE OF THE
CLERK

Complainant,

v.

MUR # 6750

140443628880

Carl DeMaio
Carl DeMaio for Congress
Paul Kilgore
P.O. Box 27227
San Diego, CA 92198

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Carl DeMaio, Carl DeMaio for Congress, and Paul Kilgore, as Treasurer of Carl DeMaio for Congress, requesting that the Federal Election Commission (the "Commission") investigate violations of the Federal Election Campaign Act (the "Act"), as described below.

FACTS

Respondent Carl DeMaio is currently a candidate for Congress in California's Fifty-Second Congressional District. DeMaio filed a Statement of Candidacy with the Commission on June 4, 2013. Carl DeMaio for Congress is DeMaio's principal campaign committee. Carl DeMaio for Congress filed its Statement of Organization with the Commission on May 30, 2013. Paul Kilgore is the federal committee's treasurer. Hereinafter, DeMaio, Carl DeMaio for Congress, and Paul Kilgore shall be referred to collectively as "Respondents."

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DeMaio is also the co-founder of the political organization Reform for San Diego.¹ According to public reports filed with the San Diego Office of the City Clerk, Reform San Diego is a city general purpose committee under California law that was formed "to support ballot measures."² Before changing its name in the weeks before DeMaio announced his federal candidacy, the organization was called "Reforming City Hall with Carl DeMaio" and was registered as an Officeholder or Candidate Controlled Committee, with DeMaio as the controlling officer.³ Reforming City Hall with Carl DeMaio raised \$41,650 in nonfederal funds in 2012⁴ and Reform San Diego raised \$53,537 in nonfederal funds in the first half of 2013.⁵ In both 2012 and 2013, the organization reported receiving multiple contributions from federally impermissible sources such as corporations.

In 2012, Reforming City Hall with Carl DeMaio was active in two ballot measure campaigns.⁶ Nonetheless, the nonfederal committee reported receiving just eleven monetary contributions (other than a personal loan from DeMaio) in 2012: ten contributions totaling \$9,150 from various corporations, and a single \$500 contribution from an individual.⁷ The committee reported total expenditures of \$4,920 in connection with the two ballot measures.

By contrast, Reform San Diego reported a much higher level of activity in the first half of 2013, even though no ballot question is currently in front of San Diego voters. The nonfederal committee reported receiving contributions totaling \$33,000 from over 100 contributors,

¹ Brooke Williams and Claire Tragesar, Carl DeMaio: 'The Future Something', KPBS.ORG (June 19, 2013), available at <http://www.kpbs.org/news/2013/jun/19/carl-demaio-congress-reform-san-diego-campaign-fin>.

² See <https://ssl.netfile.com/pub2/RequestPDF.aspx?id=142108027>.

³ See <https://ssl.netfile.com/pub2/RequestPDF.aspx?id=11167998>.

⁴ See <https://ssl.netfile.com/pub2/RequestPDF.aspx?id=139453676>.

⁵ See <https://ssl.netfile.com/pub2/RequestPDF.aspx?id=144536235>.

⁶ See Reform San Diego, Current Campaigns, available at http://reformsandiego.org/2013_Efforts.html.

⁷ All public reports filed by Reform San Diego and Reforming City Hall with Carl DeMaio are available by accessing the City of San Diego Office of the City Clerk electronic disclosure portal at <https://ssl.netfile.com/pub2/Default.aspx?focus=SearchName> and searching for Filer ID 1268914.

including multiple contributions from corporations.⁸ According to Reform San Diego's website and public news reports, the nonfederal committee has held at least two fundraising events in 2013, both of which featured solicitations for corporate contributions and for individual contributions in unlimited amounts.⁹

Most notably, Reform San Diego has *already* made a tenfold increase in expenditures over its reported 2012 activity. Included in the nonfederal committee's \$53,437 of expenditures through June 2013 are:

- Six disbursements totaling \$9,000 for campaign consulting services
- A \$7,500 disbursement for polling to Competitive Edge Research & Communications, Inc.
- Over \$1,000 in disbursements to Aristotle International, Inc., a Washington, DC-based political data and consulting firm (reported as "office expenses")
- \$600 to Constant Contact, a digital marketing firm, for internet and email services

A review of public reports filed in 2012 by Reforming City Hall with Carl DeMaio shows the committee did not normally incur these kinds of expenses, even in a year when it actively campaigned in connection with two separate ballot questions.

Strikingly, none of these expenditures appear as in-kind contributions on the first quarterly report filed by respondent Carl DeMaio for Congress.¹⁰ Indeed, Carl DeMaio for Congress does not report a single expenditure during the "testing the waters" period before DeMaio's principal campaign committee filed its statement of organization with the

⁸ See <https://ssl.netfile.com/pub2/RequestPDF.aspx?id=144536235>.

⁹ See <http://carldemaio.com/events/2013/01/29/fundraising-reception-reform-san-diego> and <http://carldemaio.com/events/2013/06/25/fundraising-reception-rancho-santa-fe>. See also Williams and Tragesar, *supra* note 1.

¹⁰ See Carl DeMaio for Congress, July 2013 Quarterly Report (Amended), available at <http://query.nictusa.com/pdf/018/13964503018/13964503018.pdf>.

Commission. Nor does the committee report a single contribution – including any in-kind contributions – during the time DeMaio would have been considering his federal candidacy and when his nonfederal committee was spending tens of thousands of dollars to conduct polls and engage campaign consultants.

LEGAL ARGUMENT

The Federal Election Campaign Act, as amended by the Bipartisan Campaign Reform Act of 2002, prohibits federal candidates and officeholders, and entities they establish, maintain, finance, or control, from soliciting, directing, transferring, or spending funds in connection with an election that are outside the federal source restrictions.¹¹ This restriction applies even before an individual becomes a federal candidate: Commission regulations require that an individual testing the waters for a potential federal candidacy similarly may not accept or expend funds from prohibited sources, such as corporations.¹² For example, the Commission has found that the costs of conducting a poll for purposes of testing the waters for a potential federal candidacy must be made entirely from federally permissible funds.¹³ Thus, any receipt or expenditure of corporate funds to explore or test the waters for a federal election is prohibited.

There is strong evidence that Respondents have violated these provisions. While respondent committee Carl DeMaio for Congress reported no activity during the time DeMaio would have been considering a run for Congress, respondent Carl DeMaio's nonfederal committee reported spending tens of thousands of dollars to conduct polls, engage campaign consultants, and secure services from data and email vendors. The nonfederal committee also

¹¹ 2 U.S.C. § 441i(e)(1); 11 C.F.R. §§ 300.61, 300.62.

¹² 11 C.F.R. §§ 100.72(a), 100.131(a).

¹³ Fed. Election Comm'n Advisory Op. No. 1988-18 (Oct. 9, 1998).

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paid \$323.20 to buy a ticket on Southwest Airlines for DeMaio to travel to Washington, D.C. in January 2013.¹⁴

These expenses cannot be explained as payments made in the normal course of supporting ballot question initiatives. First, there is no ballot question currently in front of San Diego voters. Second, even if there were an upcoming election, the absence of any reported polling or consulting payments in 2012 shows DeMaio's nonfederal committee did not normally incur these sorts of expenses until the months leading up to DeMaio's declaration of federal candidacy. Third, it is not at all clear why DeMaio would be required to travel to Washington, D.C., in connection with a City of San Diego ballot measure. However, it would make perfect sense that such a trip would take place if DeMaio were exploring a candidacy for federal election.

Because the evidence shows Reform San Diego accepted contributions from corporate funds and used those funds to make in-kind contributions in connection with DeMaio's exploration of federal election, Respondents have solicited, received, or directed funds outside of the federal source restrictions, in violation of 2 U.S.C. § 441i(e). Second, by paying for various testing the waters expenses with prohibited corporate funds, Respondents have violated 11 C.F.R. § 100.72(a) and 11 C.F.R. § 100.131(a) prohibiting the use of funds not otherwise permitted under the Act in connection with testing the waters for a potential federal candidacy. Third, because Reform San Diego's expenditures in connection with DeMaio's testing the waters

¹⁴ See <https://ssl.netfile.com/pub2/RequestPDF.aspx?id=139453676>.

activities total over \$5,000, Respondents have accepted in-kind contributions in excess of the contribution limits set by 11 C.F.R. § 110.1(b).¹⁵

The Act and Commission regulations also require candidate committees to itemize on their FEC reports any in-kind contributions they receive from donors who have contributed more than \$200 in the aggregate for the election cycle.¹⁶ An in-kind contribution includes "anything of value made by any person for the purpose of influencing any election for Federal office."¹⁷ Normally, funds or other items received solely to test the waters for a potential federal candidacy are not considered contributions.¹⁸ However, once an individual becomes a candidate, all contributions received during the testing the waters period "must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received."¹⁹

By failing to report a single contribution or expenditure during the testing the waters period, including in-kind contributions for expenditures paid by Reform San Diego with prohibited funds, Respondents are in violation of the Act and the Commission's reporting requirements.

Respondents' violations are not *de minimis*. Disbursements for a \$7,500 poll and \$9,000 worth of consulting fees are substantial in any Congressional campaign. They are especially significant when they are the very services that helped establish the foundation for DeMaio's decision to become a federal candidate. By accepting in-kind contributions of such services paid

¹⁵ See 11 C.F.R. § 110.1(b)(6) (in-kind contribution considered to be made on date services are provided). See also Fed. Election Comm'n Advisory Op. No. 1988-18 (applying 11 C.F.R. § 110.1(b)(6) to in-kind contributions made during the testing the waters period.)

¹⁶ 2 U.S.C. § 434(b)(3).

¹⁷ *Id.* § 431(8)(A)(i).

¹⁸ 11 C.F.R. § 100.72(a).

¹⁹ *Id.*

for with prohibited funds, and by failing to disclose those testing the waters contributions on their first quarterly report to the Commission, Respondents are in violation of both the Act and Commission regulations.

CONCLUSION

For the reasons described above, I respectfully request the Commission investigate this matter immediately. I respectfully ask that the Commission enjoin Respondents from further violations of the law, and that it fine Respondents the maximum amount permitted by law. The Commission should also investigate whether Respondents violation was knowing and willful.

Sincerely,



SUBSCRIBED AND SWORN to before me this 15 day of August, 2013.

Yolanda Quinones
Notary Public

My Commission Expires:

January 12, 2014

